

#### **DETAILED ACTION**

1. This Office Action is responsive to the Amendment filed 5 May 2010. Claims 50-66, 68-73, 77-83 and 86-90 are now pending. The Examiner acknowledges the amendments to claims 53, 69 and 87, as well as the cancellation of claim 76 and the addition of claims 89 and 90.

#### ***Allowable Subject Matter***

2. Claims 50-66, 68-73, 77-83 and 86-90 are allowable over the prior art of record. The following is an examiner's statement of reasons for allowance:

Regarding claims 50-66, 68-73 and 77-79, while the prior art discloses a kit for implanting an implantable marker, the prior art of record does not teach or fairly suggest a kit for percutaneously implanting an implantable marker in bone, wherein the kit further comprises a drill receivable within the guide channel, the drill having a drill bit at a distal end for creating a hole in the bone.

Regarding claim 80, the prior art of record does not teach or fairly suggest a kit for implanting an implantable marker in bone as claimed by Applicant, wherein the insertion tool includes the drill and wherein the distal end of the insertion tool is a separable part of the insertion tool into which at least the drill bit can be releasably fastened to provide the insertion tool.

Regarding claims 81-83 and 86-88, the prior art of record does not teach or fairly suggest a method for percutaneously implanting an implantable marker in a bone, wherein the instrument includes a guide channel extending at least partially along a

longitudinal axis of the instrument, and the step of drilling the hole includes translating a drill at least partially along the guide channel of the instrument. The prior art teaches a guide instrument which is solid for self-drilling, and therefore a drill is not translated along the guide channel of the instrument.

Regarding claim 89, while the prior art discloses a kit for implanting an implantable marker, the prior art of record does not teach or fairly suggest a kit for percutaneously implanting an implantable marker in bone, wherein a distal end of the guide instrument has a bone engaging formation which includes a plurality of bone penetrating teeth and wherein at least a first and second plurality of bone penetrating teeth face in opposite sense.

Regarding claim 90, while the prior art discloses a kit for implanting an implantable marker, the prior art of record does not teach or fairly suggest a kit for percutaneously implanting an implantable marker in bone, wherein the kit includes a drill locatable within the guide channel and having a drill bit, wherein the bit has a skin piercing tip such that the drill is located within the guide channel with the tip extending from the distal end of the guide instrument when assembled.

### ***Conclusion***

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTINE D. HOPKINS whose telephone number is (571)272-9058. The examiner can normally be reached on Monday-Friday, 7 a.m.-3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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